Guns, Insurance, and the Ethos of Private Protection

by Joseph S. Harrington

Abstract

Liability insurers in the United States do not have a large exposure to losses arising from firearms, as policies typically exclude coverage for intentional injury, and the incidence of accidental deaths and injuries from firearms is rare compared with other hazards. Little has happened to change those fundamental realities, but liability insurers may face marginally increased exposure to firearms injury claims resulting from a growing affirmation of private self-defense, indicated by an increased number of concealed carry permits and enactment of Stand Your Ground laws. While firearms have rarely been a major consideration for liability underwriting, insurers today may want to know whether their gun-owning clients are aware of their legal obligations related to self-defense and alert these clients to the availability of insurance programs that provide liability coverage.

"There is only one person responsible for my happiness, safety, and security," says Tim Schmidt, founder and president of the United States Concealed Carry Association (USCCA), an organization devoted to training and supporting individuals who carry firearms for self-defense, "and that one person is me."

Thinking along this line has driven enactment in recent years of Stand Your Ground laws in several states. These statutes reduce or eliminate the traditional common law duty that an individual who is assaulted or threatened in public must seek to retreat before resorting to the use of force in self-defense.

In a report on the impact of Stand Your Ground laws, researchers from Georgia State University stated that proponents of Stand Your Ground laws "contend that law-abiding citizens must be able to protect themselves from intruders and attackers without having to worry about criminal or civil penalties before taking action in self-defense."[1]

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Not everyone agrees, however, and substantial disagreement exists around the implications of Stand Your Ground laws for public safety. For example, a November 2016 report in the *Journal of the American Medical Association* concluded that "the implementation of Florida's stand your ground self-defense law [in 2006] was associated with a significant increase in homicides and homicides by firearm, but no change in rates of suicide or suicide by firearm."[2]

There is a similar divide over the public safety implications of the vastly expanded number of Americans who have licenses, available now in every state, to carry concealed firearms.

The Crime Prevention Research Center (CPRC), an organization that supports gun rights, reported in 2015 that the nation's murder rate had fallen about 25 percent—from 5.6 victims to 4.2 per 100,000 people—during the preceding seven-year period, while the number of concealed-carry permit holders nearly tripled from 4.6 to 12.8 million.[3]

The Violence Policy Center (VPC), which favors restrictions on guns, disputes the impact of privately owned firearms in suppressing crime and reported in 2016 that there had been at least 849 killings not in self-defense by concealed-carry permit holders over the same period cited by the CPRC. Given the lack of comprehensive reporting on fatalities by concealed-carry permit holders, the VPC believes the sum "most likely represents a small fraction of the actual total."[4]

Insurance Implications

So what does this have to do with insurance?

Readers may recall that, in the wake of the mass shooting in Newtown, Connecticut, several states considered legislative proposals to mandate liability insurance at high limits for people owning firearms.

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The proposals essentially went nowhere, for the simple reason that liability insurance as traditionally understood can only cover the accidental injuries that arise from firearms—and accidental firearms injuries are actually quite rare in the United States.

Of the roughly 30,000 firearms fatalities in the U.S. each year, well less than 1,000 are accidental. Similarly, only a small fraction of nonfatal firearms injuries are accidental, and many of them are to the person handling the gun.

In all, firearms account for far fewer accidental deaths and injuries than autos and household hazards. So, while many insurers have introduced product, pricing, and underwriting measures to address dogs, trampolines, swimming pools, and other common liability exposures, firearms accidents have rarely received such attention, given their low frequency of occurrence.

In light of mass shootings, personal umbrella carriers now commonly ask how many guns are owned by an insured household and whether those weapons are secured. Adverse underwriting or pricing action is rare, however, as it is recognized that some law-abiding households like to collect guns but are nonetheless good personal lines accounts.

Reasonable Action

Of course, liability insurers are generally shielded from exposure to gun violence by the presence of intentional injury exclusions in standard homeowners and personal liability policies.

The overwhelming majority of gun deaths are homicides and suicides, and the overwhelming majority of gun injuries arise from willful acts of violence. It is a well-established principle that one cannot insure against a willful act; to do so would violate public policy in many jurisdictions.

There is, however, a standard exception to the intentional injury exclusion that preserves coverage for liability for bodily injury and property damage arising from the reasonable use of force to protect people and property. The ethos of private defense may well test and redefine the limits of what is deemed "reasonable," with potentially profound implications for liability.

Indeed, discussion of justifiable homicide has become more commonplace in recent years.

Since the advent of modern police forces, most civilians likely never even contemplated having to kill someone on their own. Today, many advocates of the ethos of personal self-defense view armed protection as a civic duty as well as a

natural right. They do not advocate killing anyone, but they prepare themselves for the need to do so.

In 2015, an American Bar Association task force on Stand Your Ground laws noted that individuals asserting Stand Your Ground rights are often unaware that they are generally still obligated to "act reasonably in perceiving the imminence of the threat, the necessity to respond to the threat, and whether the threat is a deadly or non-deadly threat." In addition, the task force report indicates that, as of 2014, thirty-three states had adopted a "no duty to retreat" legal standard, either through case law or a Stand Your Ground statute, but only eighteen had granted immunity from civil liability arising from a decision to confront a threat rather than retreat.[5]

Coverage

There is no indication to date that concealed carry permits, Stand Your Ground laws, or any other legal self-defense measures have increased the scope and scale of firearms liability to the point that personal liability insurers need to fundamentally rethink their policy provisions or liability rating.

As long as insurers are effectively shielded from exposure to claims arising from suicides and criminal acts, there is no reason to believe that the private voluntary market cannot continue to bear its relatively small exposure for accidental firearms injuries.

Even if overall exposure for firearms expands to include more liability arising from acts of self-defense, the number of casualties cited in the debate over public safety—however tragic on a personal level—pales compared with the number of people killed and injured in traffic accidents and other occurrences covered by the private insurance market.

Claims fall upon individual insurers, however, not the market in general. Personal liability insurers, who have had little reason in the past to inquire about

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firearms, have greater reason now to know whether their insureds have the means and will to defend themselves with firearms, especially in public places.

At the very least, an insurer will have added exposure for defense costs, if only to seek to dismiss a civil claim against a policyholder. Beyond that, the prospect of a severe liability claim, perhaps by a bystander injured in a self-defense shooting, increases from extremely rare to somewhat less rare.

There are two specific reasons why a personal liability insurer may want to know about the use of firearms by an insured household:

- To educate insureds about the specific provisions of "no retreat" laws that apply to them, so they are aware of any exposure to civil liability and their corresponding duties and not acting under erroneous assumptions
- To educate insureds about coverage available from organizations that provide firearms training and insurance services

USCCA offers an insurance program as part of its membership; the National Rifle Association (NRA) and other organizations of gun owners offer similar programs.[6] The programs vary, but generally provide coverage for the following:

- Defense costs for a civil claim against an insured for bodily injury (BI) arising from a self-defense shooting
- Damages assessed against an insured for BI arising from a self-defense shooting
- Defense costs for administrative or criminal proceedings against an insured

Coverage typically extends to self-defense use of any firearms owned by an insured, unless expressly excluded, and to the insured's spouse, although he or she may have to be a member of the program. The first two limits respond to intentional injury claims, typically excluded under personal liability policies, and may provide primary coverage over homeowners and other insurance for accidental injuries. The criminal defense limit provides coverage not available in private insurance.

Premises Liability

For a time, it appeared that the ethos of private defense might become a premises liability concern for business establishments. That concern seems to be less imminent now, but it has not disappeared.

In 2016, the Tennessee legislature made national news as it advanced a bill that would have imposed "absolute custodial responsibility" for the safety of patrons of establishments that prohibited legal firearms on their premises. Under the bill as originally proposed, Tennessee businesses that posted signs reading "no guns allowed" would assume responsibility for protecting permit holders from harm by patrons, trespassers, employees, animals, and other "defensible man-made and natural hazards."

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Late in the session, however, the bill was completely revised to state merely that establishments that do not ban firearms on premises are immune from civil liability arising from that decision.

In that respect, the final Tennessee law is similar to a 2014 law in Wisconsin that protects employers from liability for allowing employees to carry licensed, concealed firearms on work premises. (Under both the Tennessee and Wisconsin acts, the civil immunity extends only to the decision to allow guns on premises and not to other types of liability that may arise from a gun-related incident.)

Bills similar to the original Tennessee proposal have been introduced in Florida, Missouri, and Texas, but have not yet made it out of committee. The logic of these proposals is that establishments that ban legal firearms on premises are prohibiting people from lawfully defending themselves. Under that logic, the responsibility for personal security must pass to whoever is restricting the use of legal firearms.

What Do You Say?

Should these proposals become law, it would turn conventional wisdom on liability loss control on its head.

Until very recently, businesses concerned about firearms liability had often been advised to post prohibitions on firearms, the logic being that any injury from a firearm clearly came about in opposition to a clearly expressed directive of the establishment. That approach may be illusory to begin with, as it is rarely possible to avoid liability by simply posting a sign.

If presented with the prospect of strict liability for patrons' safety, an establishment and its general liability insurer may find that the safest course of action is to do or say nothing regarding on-premises use of firearms. Merchants in most states have the right to demand that a legal firearm be concealed from public view, but any restriction on otherwise lawful use of firearms may be alleged by an injured claimant as interference with the right of self-defense.

Again, acts of violence in public places understandably shock our public consciousness. But they are still rare compared with the injury-causing occurrences that liability insurers respond to every day. With that in mind, there is no reason for liability insurers to question the insurability of private protection, but they need to watch the growth and evolution of the exposure. ■

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Endnotes

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4. Violence Policy Center, "More than 800 Deaths at the Hands of Concealed Carry Killers Since 2007, VPC Research Shows," press release, Jan. 15, 2016.
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6. See programs available through the Armed Citizens Network (www.armedcitzensnetowrk.org), CCW Safe (ccwsafe.com), the National Rifle Association (www.nracarryguard.com), Second Call Defense (www.secondcalldefense.org), the United States Concealed Carry Association (www.usconcealedcarry.com), and U.S. Law Shield (www.uslawshield.com). List is not exhaustive.

Joseph S. Harrington, CPCU, ARP, is an independent business researcher and writer who has published articles in numerous insurance publications and given several presentations to insurance industry meetings. For more than twenty-one years, he was communications director for the American Association of Insurance Services (AAIS). During that time, he also served on the national curriculum advisory committee for what is now known as The Institutes. Harrington serves on The Institutes CPCU Society Publications Committee.